

REMARKS

The Examiner has required restriction to one of the following inventions under 35 U.S.C. §121 and 372:

Group I, claims 1-3, drawn to a method of identifying an attenuated RSV strain.

Group II, claims 4-7, drawn to a process for producing purified RSV F protein.

Group III, claims 8-10, drawn to RSV F protein.

Group IV, claims 11-14, drawn to a process for producing purified RSV G protein.

Group V, claims 15-17, drawn to RSV G protein.

Responsive to the Requirement for Restriction, Applicants elect to prosecute the invention of Group I, claims 1-3, drawn to a method of identifying an attenuated RSV strain, with traverse.

Applicants respectfully request reconsideration of the Requirement for Restriction as requested by the Examiner, or in the alternative, modification of the Restriction Requirement to allow prosecution of more than one group of claims designated by the Examiner in the present Application, for the reasons provided as follows.

Under 35 U.S.C. §121 "two or more independent and distinct inventions ... in one Application may ... be restricted to one of the inventions." Inventions are "'independent'" if "there is no disclosed relationship between the two or more subjects disclosed" (MPEP 802.01). The term "'distinct'" means that "two or more subjects as disclosed are related ... but are capable of separate manufacture, use or sale as claimed, and are patentable over each other" (MPEP 802.01). However, even with patentably distinct inventions, restriction is not required unless one of the following reasons appear (MPEP 808.02):

1. Separate classification
2. Separate status in the art; or
3. Different field of search.

Further, under Patent Office Examining Procedures, "[i]f the Search and Examination of an entire Application can be made without serious burden, the Examiner is encouraged to examine it on the merits, even though it includes claims to distinct or independent inventions" (MPEP 803, Rev. 8, May 1988).

Applicants respectfully submit that the groups designated by the Examiner fail to define methods and compositions with properties so distinct as to warrant separate Examination and search. The claims of elected Group I are drawn to methods of identifying an attenuated RSV

strain that produces high yields of RSV surface glycoproteins F and G. Applicants respectfully assert that the claims of Group I are fundamentally related to the claims of Groups II-V, which are drawn to the RSV F and G glycoproteins and the processes used to produce the purified F or G glycoproteins. Accordingly, Applicants submit that since the claims of Groups II-V are fundamentally related to the claims of elected Group I, the search on the subject matter in all of the claims should not pose an undue search burden on the Examiner.

Applicants respectfully assert that the search for the subject matter of claims 1-3 of Group I would result in identification of overlapping subject matter of the claims of Groups II-V, thus resulting in a duplicate search for the same material.

In view thereof, Applicants urge that the restriction be withdrawn for the subject matter of Group I, claims 1-3 and that all of the claims of record be examined simultaneously.

Applicants reserve the right to re-join the inventions or claim the inventions in one or more divisional applications filed within the life of the patent application.


No fees are believed to be necessitated by the foregoing Response. However, should this be erroneous, authorization is hereby given to charge Deposit Account No. 01-1425 for any underpayment, or credit any overages.

In view of the above, an early and favorable action on the merits of the claims is courteously solicited.

During the pendency of this application please treat any reply requiring a petition for extension of time for its timely submission as containing a request therefore for the appropriate length of time.

The Commissioner is hereby authorized to charge all required extension of time fees during the entire pendency of this application to Deposit Account No. 01-1425.

Respectfully submitted,


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